

FREE RECORDING REQUESTED)
PURSUANT TO GOVERNMENT)
CODE SECTION 27383)
)
Recording requested by and)
when recorded return to:)
)
CALIFORNIA HOUSING FINANCE)
AGENCY)
Office of General Counsel)
P.O. Box 4034)
Sacramento, CA 95812-4034)

(Space above this line for Recorder's use)

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN(S) OF SOME OTHER OR LATER SECURITY INTEREST(S).

THIS AGREEMENT is entered into as of _____, 200__, by and between _____ ("Lender"), _____ ("Borrower"), and the California Housing Finance Agency, a public instrumentality and a political subdivision of the State of California ("CalHFA"), in connection with a loan to finance a multifamily residential rental housing project on real property located in _____, County of _____, California and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("Development").

RECITALS

A. WHEREAS, CalHFA is making, contemporaneously with the making of this Agreement, a construction loan, convertible upon satisfaction of certain conditions to a permanent first mortgage loan, to Borrower ("CalHFA Loan"). The CalHFA Loan is evidenced by a promissory note from the Borrower to CalHFA in the face amount of \$_____ secured by a deed of trust. The deed of trust was executed by Borrower and _____, as trustors, to the trustee named therein, in favor of CalHFA, as beneficiary, and is entitled "California Housing Finance Agency, Construction Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing, CalHFA Development No. _____" dated on or about the date of this Agreement (the "CalHFA Deed of Trust") to be recorded in the Official Records of _____ County contemporaneously with this Agreement. The Development shall also be regulated and encumbered by a regulatory agreement executed by Borrower and CalHFA entitled "Regulatory Agreement, CalHFA Development No. _____" dated on or about the date of this Agreement (the "CalHFA Regulatory Agreement"), to be recorded in the Official Records contemporaneously with this Agreement. In addition, CalHFA has or will be filing a UCC Financing

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Statement with the Secretary of State evidencing Borrower's granting a security interest in the Development ("UCC Statement"). The CalHFA Regulatory Agreement, CalHFA Deed of Trust and related documents, and the UCC Statement shall hereafter be collectively referred to herein as the "CalHFA Documents." The CalHFA Documents provide for construction financing and, subject to satisfaction of specified conditions, for permanent financing for the Development.

B. WHEREAS, Lender has agreed to provide construction and permanent financing pursuant to a promissory note in the amount of approximately \$_____ to be secured by a deed of trust. Lender may file or record a UCC-1 financing statement and may restrict the Development by recording a development agreement, declaration of restrictions or similar document against the Development. All of these documents and any other documents evidencing the financing for the Development provided by Lender are referred to as the "Lender Documents."

C. WHEREAS, it is a requirement of CalHFA that the CalHFA Documents be senior to the Lender Documents, and Lender is willing to subordinate its Lender Documents to the CalHFA Documents.

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Subordination.

(a) The Lender Documents are hereby subordinated to the CalHFA Documents including all extensions, modifications or additional advances made thereunder. Hereafter, the CalHFA Documents shall unconditionally be, and remain at all times, liens and encumbrances on the Development prior and superior to the liens and encumbrances of the Lender Documents, and to all rights and privileges of the parties thereunder, and the liens and encumbrances of the Lender Documents together with all rights and privileges of the parties thereunder shall hereby be subjected and made subordinate to the liens and encumbrances of the CalHFA Documents.

(b) *Lender acknowledges that it is familiar with the forms of loan documents used by CalHFA, and Lender has no objection to any of their terms, including terms that provide for payment based on "residual receipts" or similar terms referring to available cash and that leave no available cash for making any payments on the Lender Documents.*

(c) Lender has reviewed, or has had the opportunity to review, the plans and specifications and the budget for construction of the Development. Lender agrees that CalHFA has no duty to Lender to see to the actual application of construction loan funds. Lender waives notice of and any defense to enforcement of its obligations under this Agreement based on: (i) changes in the plans and specifications or budget, (ii) the actual application of funds disbursed by CalHFA under the CalHFA Documents; (iii) the value of the Development upon completion of construction; and (iv) modification of any of the CalHFA Documents or release or exchange of any security or any obligor under the CalHFA Documents, unless such modification, release or exchange would materially and adversely affect Lender and is made without Lender's written consent.

(d) Lender agrees to sign such further agreements as CalHFA (or any title insurer insuring the lien of the CalHFA Loan Documents) may reasonably request to confirm the subordination of the

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Lender Documents to any of the CalHFA Documents, including any of the CalHFA Documents that may be executed or recorded only upon completion of construction of the Development or otherwise in connection with permanent or bridge financing of the Development.

[if lender is a locality] (e) CalHFA agrees that it shall use its best efforts to provide Lender with a copy of all initial notices of default provided to Borrower under the CalHFA Documents, provided, CalHFA shall have no liability to Lender and/or Borrower for its failure to do so, nor shall failure to do so constitute grounds for any restraining order, injunction, or other prohibition against or delay in CalHFA's exercise of its remedies under the CalHFA Documents. CalHFA shall not record a notice of default related to such initial notice during the period ninety (90) days after the date of such initial notice if such notice relates to a nonmonetary default or defaults under the CalHFA Documents. During the term of such period Lender shall have the right, but not the obligation, to cure any nonmonetary default under such initial notice. Notwithstanding the foregoing, if at any time following the date of the initial notice, there shall occur or be continuing a default in the payment of any amount due CalHFA under the CalHFA Documents, CalHFA shall have the right to, and in its sole discretion may, record a notice of default and proceed to foreclosure based upon any such nonpayment regardless of any extended cure period with respect to nonmonetary defaults.

(f) CalHFA further agrees that it shall not accelerate the CalHFA Loan by reason of any foreclosure by Lender (or acquisition of the Development by Lender in lieu of any such foreclosure) under the terms of the Lender Documents; provided:

(i) there shall not occur or be continuing any default in the payment of any amount owed CalHFA or any obligations required to be performed under the CalHFA Documents; and

(ii) Lender shall not unreasonably delay to proceed to conclusion of such foreclosure or acquisition.

(g) Lender has read, understands and approves the CalHFA Documents and agrees to be bound thereby in the event of its foreclosure or acquisition of the Development.

(h) [if applicable] The provisions of this Section 1 shall be subject to, and to the extent of any inconsistency, superseded by, the requirements of the HUD-FHA State Agency Risk Share Program, as in effect from time to time.

2. Estoppel Provisions. Lender hereby represents and warrants to CalHFA that at the time of execution of this agreement, the Borrower is in substantial compliance with its obligations to the Lender under the terms of the Lender Documents. Lender has read and understands the CalHFA Documents and agrees that in the event CalHFA determines there is a conflict of terms between the CalHFA Documents and Lender Documents, the terms of the CalHFA Documents shall prevail.

3. Successors and Assigns. This Agreement is for the benefit of the parties hereto and is enforceable by any party against any successors in interest or assigns of any party hereto.

4. Attorneys' Fees. If any party shall take any legal action to enforce the terms and conditions of this Agreement, the prevailing party or parties shall be entitled to recover legal costs and reasonable attorneys' fees from the other party or parties.

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5. Amendments. Amendments to this Agreement must be in writing and signed by all parties hereto.

6. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of California.

7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, it will not invalidate or render unenforceable any other part of this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall become effective upon recordation.

Borrower

Lender

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CalHFA

California Housing Finance Agency, a public
instrumentality and political subdivision of the State of
California

By: _____
Name: _____
Title: _____

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ACKNOWLEDGMENTS

STATE OF CALIFORNIA }
COUNTY OF _____ } ss.

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA }
COUNTY OF _____ } ss.

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit A
Legal Description